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 11 Attorneys for Defendants
 12 SELECT PORTFOLIO SERVICING, INC., fka
 13 FAIRBANKS CAPITAL CORPORATION, erroneously sued herein as
 14 SELECT PORTFOLIO SERCIVING CORP., and FAIRBANKS HOLDING
 15 CORP.

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

15 PATRICIA C. BARBERA,) Case No.: 4:08-CV-02677-SBA
 16 Plaintiff,)
 17 v.) Earlier Related Case: 4:04-cv-03738-
 18 WMC MORTGAGE CORPORATION a) [Assigned to Hon. Saundra Brown
 19 California Corporation; aka WMC) Armstrong]
 20 DIRECT, a California Business Entity,) **SELECT PORTFOLIO**
 21 GE CONSUMER FINANCE, a unit of) **SERVICING, INC., FORMERLY**
 22 General Electric Company; SELECT) **KNOWN AS FAIRBANKS**
 23 PORTFOLIO SERVICING CORP., a) **CAPITAL CORP., ERRONEOUSLY**
 24 Utah Corporation, FAIRBANKS) **SUED HEREIN AS SELECT**
 25 HOLDING CORPORATION, Delaware) **PORTFOLIO SERVICING CORP.**
 26 Corporation; and LAND TITLE) **and FAIRBANKS HOLDING**
 27 COMPANY OF MARIN, a California) **CORP.'S REPLY TO**
 28 Business Entity; and DOES 1 through) **NON-OPPOSITION**
 100, inclusive.
 Defendants.) Date: July 29, 2008
) Time: 1:00 p.m.
) Dept.: 3, Third Floor

1 Defendant Select Portfolio Servicing, Inc., (“SPS”) fka Fairbanks Capital
2 Corporation, *erroneously sued herein as two separate entities* Select Portfolio
3 Servicing Corp., and Fairbanks Holding Corp., hereby submits this Reply to Non-
4 Opposition to its Motion to Dismiss the Complaint for Failure to State a Claim
5 (“Reply”).

6 On June 17, 2008, SPS filed its Motion to Dismiss the Complaint for Failure
7 to State a Claim, with a hearing date of July 22, 2008, which hearing date was later
8 continued to July 29, 2008, the same time as co-defendants' scheduled motions for
9 dismissal. Per Local Rule 7.3, Plaintiff Patricia Barbera's ("Barbera") opposition
10 papers should have been filed and served not less than 21 days before the hearing
11 date, which date was July 8, 2008.

12 As of the date of this Reply, Barbera has failed to file or serve any
13 opposition. The failure to file opposition papers may be treated as a consent to
14 granting the motion.¹ SPS hereby respectfully requests that the Court grant its
15 motion and dismiss the complaint with prejudice.

Respectfully submitted,

WRIGHT, FINLAY & ZAK, LLP

19 | Dated: July 14, 2008

By: Kathy Shakibi

Robin Prema Wright, Esq.,
Kathy Shakibi, Esq.,
Attorneys for Defendants,
SELECT PORTFOLIO SERVICING,
INC., fka FAIRBANKS CAPITAL
CORP. erroneously sued herein as
two separate entities SELECT
PORTFOLIO SERVICING CORP.
and FAIRBANKS HOLDING CORP.

²⁸ ¹ See *Ghazali v. Moran* (9th Cir. 1995) 46 F3d 52, 53–54; see also *Fox v. American Airlines, Inc.* (DC Cir. 2004) 389 F3d 1291, 1295.

1 PROOF OF SERVICE
23 I, Gretchen Grant, declare as follows:
45 I am employed in the County of Orange, State of California. I am over the
6 age of eighteen (18) and not a party to the within action. My business address is
7 4665 MacArthur Court, Suite 280, Newport Beach, California 92660. I am readily
8 familiar with the practices of Wright, Finlay & Zak, LLP, for collection and
9 processing of correspondence for mailing with the United States Postal Service.
10 Such correspondence is deposited with the United States Postal Service the same
11 day in the ordinary course of business.12 On July 14, 2008, I served the within **SELECT PORTFOLIO SERVICING,
13 INC.'S fka FAIRBANKS CAPITAL CORP. AND FAIRBANKS HOLDING
14 CORP'S REPLY TO NON-OPPOSITION** on all interested parties in this action
15 as follows:16 [X] by placing true copies thereof enclosed in sealed envelopes addressed as
17 follows:18 See attached service list
1920 [] (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed
21 on this date following ordinary business practices via U.S. Mail.22 [] (BY FACSIMILE) The facsimile machine I used, with telephone no. (949)
23 477-9200, complied with California Rules of Court, Rule 2003, and no error
24 was reported by the machine.25 [] (BY PERSONAL SERVICE) I have caused our Service of Process, First
26 Legal to serve such envelope on all interested parties in this action.27 [x] (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and
28 correct copies of thereof enclosed in a package designated by Federal
Express with the delivery fees provided for.29 [X] (Federal) I declare under penalty of perjury under the laws of the United
30 States of America that the foregoing is true and correct.31 Executed on July 15, 2008, at Newport Beach, California.
3233 /Gretchen Grant/
34

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3 24 Caribe Isle
4 Novato, CA 94949
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6 **Plaintiff In Pro Per**

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